

ANDREW W. BRAINERD

IBLA 78-367

Decided August 21, 1978

Appeal from decision of the New Mexico State Office, Bureau of Land Management, requesting increased annual rental for noncompetitive oil and gas lease NM 6005.

Affirmed as modified.

1. Oil and Gas Leases: Rentals -- Regulations: Applicability

An oil and gas lessee is properly required to pay the higher rental prescribed by duly promulgated regulations of the Department where all or part of the lands in the lease have been included within the known geologic structure of a producing oil or gas field. However, where a discovery is made on the leased lands, at the expiration of that lease year the lease goes on a minimum royalty basis. 43 CFR 3103.3-5.

APPEARANCES: Andrew W. Brainerd, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Andrew W. Brainerd appeals from a March 7, 1978, decision of the New Mexico State Office, Bureau of Land Management (BLM), which advised him as follows:

In accordance with the regulation 43 CFR 3103.3-2(b)(1), notice is hereby given that all or part of the lands in the above lease are within the known geologic structure of the oil or gas field noted in the caption. Beginning with the next lease year after expiration of the 30-day period following receipt of this notice, and for each year thereafter prior to discovery or commitment of the lease to a unit plan which includes a well capable of production, the annual rental for this lease shall be payable at the rate of \$2.00 per acre or fraction thereof.

Upon segregation of the lands in this lease, by assignment or otherwise, the annual rental of \$2.00 per acre or fraction thereof shall also be payable on any segregated portion which includes all or part of the lands situated within the known geologic structure.

The regulation referred to provides in material part:

§ 3103.3-2 Advance rental payments.

Rentals shall be payable in advance at the following rates:

(b) On leases wholly or partly within the known geologic structure of a producing oil and gas field:

(1) If issued noncompetitively under section 17 of the act, and not committed to a cooperative or unit plan which includes a well capable of producing oil or gas and contains a general provision for allocation of production, beginning with the first lease year after the expiration of thirty days' notice to the lessee that all or part of the land is included in such a structure and for each year thereafter prior to a discovery of oil or gas on the leased lands, rental of \$2 per acre or fraction thereof.

On the date the lease was issued, May 10, 1968, the lands covered were not within a known geologic structure. The decision below was triggered by a memorandum of February 16, 1978, from the Geological Survey advising BLM that certain lands in the lease are "within an undefined addition to an undefined known geologic structure."

In the statement of reasons appellant asserts that a gas well producing gas in commercial quantities was discovered on the lease in January 1978, and was connected into production on March 7, 1978. Appellant feels that the rental increase from 50 cents to \$2 per acre is onerous and should be rescinded. He asserts that he has expended "tens of thousands of dollars in earlier unsuccessful attempts to find gas, and such effort should not be fairly rewarded by a 300% increase in rent."

[1] The action taken by BLM in increasing appellant's rental was and is wholly in conformance with 43 CFR 3103.3-2. Accordingly, appellant would ordinarily properly be required to pay the increased rental. 1/ See H. B. Cahoon Investment Co., John Oakason, 27 IBLA

1/ The Geological Survey did not in its memo of February 16, 1978, inform BLM that a discovery had been made on the lease.

210 (1976). The Secretary of the Interior, in exercising his general powers over the public lands as guardian of the people, Knight v. United States Land Assoc., 142 U.S. 161 (1891), has discharged his duty in promulgating regulations which serve the public interest by exacting a fair return on behalf of the Government from persons engaged in exploiting the oil and gas resources of the public domain. The courts have held that the regulations of the Secretary relating to the Mineral Leasing Act, 30 U.S.C. § 189 (1970), have the force and effect of law. E.g., McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955). See also Raymond N. Joeckel, 29 IBLA 170 (1977).

However, 43 CFR 3103.3-5 provides with respect to certain kinds of leases, including the one at bar, "a minimum royalty of \$1 per acre in lieu of rental, shall be payable at the expiration of each lease year after a discovery has been made on the leased lands commencing with the lease year, beginning on or after the date of such discovery * * *."

We have informally verified appellant's assertion of discovery on the leased lands and we understand that the lease account has been transferred to the Geological Survey for payment of royalties pursuant to 43 CFR 3103.3-5. The lease in issue is, therefore, no longer subject to the payment of rentals to BLM.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

Frederick Fishman
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Joseph W. Goss
Administrative Judge

